

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Consolidated Matters of:

CLARISSA T.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Nos. L 2006060077

L 2006051068

L 2006051067

DECISION

These consolidated matters were heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on July 14, 2006, in Torrance, California. Clarissa T. (Claimant) was represented by her parents, who are Claimant's authorized representatives.¹ Harbor Regional Center (HRC or Service Agency) was represented by its Program Manager, Kathleen Richards.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 14, 2006.

ISSUES

The parties agreed that the issues to be decided are as follows:

1. May the Service Agency terminate funding for Claimant's music therapy?
2. May the Service Agency reduce the number of hours for "Social Integration and Friendship Development" from 30 hours per month to one hour per week?

¹ Claimant's last name, and the names of her family members, are omitted throughout this Decision to protect their privacy.

3. Should the Service Agency change the acquisition method for Claimant's diapers to a voucher system?
4. Should the Service Agency change the method of funding Claimant's "Social Integration and Friendship Development" to a voucher system?
5. Should the Service Agency provide vouchers for play facilitation equipment?

FACTUAL FINDINGS

1. Claimant is an eight-year-old female client of the Service Agency, diagnosed with cerebral palsy, unspecified mental retardation, and seizure disorder. She requires maximum assistance with daily living skills and is not toilet trained. Claimant is currently enrolled in a home hospitalization program through Torrance Unified School District and receives various services through the school district including 10 hours per week of home instruction by Ronin Sato (Sato) and Jennifer Cech (Cech); 3 hours per week of individual, home-based speech and language therapy provided by Cech; and 4.5 hours per week of individual occupational therapy provided by Sato.

2. Claimant resides at home with her parents and her 11-year-old sister. Both Claimant's parents have health problems which require continuing treatment.

Diaper Service

3a. The Service Agency has provided funding for Claimant's diapers since at least 2005, during which time, the vendor SuperCare, Inc., delivered diapers to Claimant's home. Prior to January 2006, there was some dispute by Claimant's parents regarding the type of diapers to be provided. SuperCare provided Huggies, but that brand gave Claimant a rash.

3b. In October 2005, Claimant's mother notified HRC that SuperCare delivered the wrong diapers twice over the summer. She requested a voucher for the diapers since the brand used by Claimant is available at supermarkets and need not be delivered.

3c. In November 2005, Claimant's mother notified HRC that Supercare had delivered the wrong shipment of diapers to her in October 2005, that she had returned the shipment to Supercare, but she did not receive any replacement diapers until November 5, 2005. She reiterated her request for a voucher.

3d. In January of 2006, the Service Agency arranged to have SuperCare deliver to Claimant's home "Pampers Cruisers" brand diapers to meet her specific needs as indicated by a December 23, 2005 prescription from her doctor.²

3e. There was no evidence that there have been any problems with delivery of Claimant's diapers since January 2006.

Music Therapy – Individual and Play Facilitation

4. Claimant has received on-going funding from the Service Agency to attend one hour per week of individual music therapy, provided by Music Wonders, since November 1, 2002.

5a. Claimant is authorized to receive Service Agency funding for 30 hours per month of play facilitation, which includes five hours per week of direct service and five hours per month of supervision, with a maximum of 30 hours per month.

5b. In August of 2003, Rick Clemens (Clemens) of Inclusive Education and Community Partnership (IECP), assessed Claimant for a social play and friendship development program upon referral by HRC. Clemens recommended that Claimant receive 30 hours per month support in the area of social play and friendship development, which should include play dates with facilitation to take place two times per week for 2.5 hours each session and supervision and program planning for 2.5 hours every four weeks. He noted that the parents should receive training, and in six months, services would be reassessed with the goal of fading support as Claimant's skills and parents' knowledge of facilitating play dates increases.

5c. Since 2003, IECP has provided to Claimant only \$200 worth of services, all provided in February 2004. The number of service hours were undisclosed by the evidence.

5d. As of March 29, 2004, IECP terminated services for Claimant, noting that Claimant's mother preferred a different service model than what IECP offered.

5e. In 2005, Music Wonders received special vendorization to provide play facilitation services for Claimant at five hours per week (25 hours maximum), and five hours of supervision per month, for a total of 30 hour per month.

² From November 2005 until January 2006, Supercare did not provide deliveries to Claimant. An interdisciplinary note from November 23, 2005, indicated that Claimant's mother declined to have SuperCare continue delivery as aid paid pending. Claimant's mother, in her testimony, denied asking for termination of the service, but rather stated that she asked for a different service or a voucher. Nevertheless, Claimant's fair hearing request did not seek reimbursement for the diaper purchases.

6a. Randy Dong (Dong), Board Certified Music Therapist with Music Wonders, provided Claimant's therapy sessions from about March 2003 until December of 2005.

6b. In a progress report dated May 1, 2005, for the period of November 1, 2004 through May 1, 2005, Dong noted that Claimant's goals were to increase her non-verbal communication skills, increase her verbal communication skills, and improve her gross and fine motor coordination, and that she was demonstrating good progress in each of her goal areas. He also noted that additional goals introduced "last period" to increase purposeful vocalization with others and increase focused attention span in a group environment. According to Dong, they continued the treatment goals of increasing verbal communication skills and improving gross and fine motor coordination.

6c. There was no evidence that the therapist's goals in Claimant's individual music therapy (increase non-verbal communication skills, increase verbal communication skills, and improve gross and fine motor coordination) and the goals in her play facilitation (increase purposeful vocalization with others and increase focused attention span in a group environment) had changed from May 2005 to August 2005.

6d. There was no evidence regarding whether the goals to which Dong alluded (increase non-verbal communication skills; increase verbal communication skills; improve gross and fine motor coordination; increase purposeful vocalization with others; and increase focused attention span in a group environment) were set by Music Therapy or by some other entity. The goals stated by Dong were not set forth in Claimant's prior July 2004 Individual Family Service Plan (IFSP).³ (See Factual Findings 9b and 9g, below.)

7. Laurel Terreri, Board Certified Music Therapist with Music Wonders began providing joint sessions with Dong in August of 2005, and continued providing sessions on her own from January 2006 through May of 2006. In total, she provided to Claimant 22 hours of therapy: 15 hours of individual music therapy for the January 2006 through May 2006, and seven hours of play facilitation from January 2006 through March 2006. No hours of play facilitation were provided in April or May 2006. Terreri is no longer providing treatment sessions because she is no longer available.

³ In the Lanterman Act (Welfare and Institutions Code sections 4400 et seq.), the plan for services for a consumer age three and older is referred to as an individual program plan, or IPP. However, HRC refers to such a plan as an Individual Family Service Plan (IFSP). As used herein, references to an IFSP should be interpreted as referencing an IPP.

March 28, 2006 IFSP, Related Reports and Correspondence

8a. On February 10, 2006, Terreri provided HRC with a report regarding Claimant's progress. She noted that Claimant had been participating in music therapy with her since August of 2005 and that Claimant had been receiving one hour of play facilitation and one hour of individual music therapy per week.

8b. The statement in Terreri's February 10, 2006 report regarding the number of hours provided was inaccurate, because Claimant had not received one hour per week of music therapy and play facilitation with Terreri or Music Wonders since August 2005. Rather, the hours provided were varied, and decreased to less than one hour per week, particularly with the play facilitation, as Terreri's treatment progressed.

8c. Terreri's February 10, 2006 report also noted:

[Claimant's] goals have included purposeful vocalizations, increasing attention span, increasing peer interaction, and increasing communication utilizing a switch. [Claimant] makes eye contact with the therapist, and seems to be watching her peers for brief periods of time during the playgroup. On occasion, [Claimant] has matched pitches and the shape of a melody (descending glide with voice) that the therapist sings.

[Claimant] needs maximum assistance to participate in the music sessions. She enjoys manipulating rhythm instruments, but needs assistance to play them successfully. At times, it seems that [Claimant] gets over-stimulated and becomes vocally expressive, but not in a purposeful way.

[I]t is recommended that music therapy focus on increasing quality of life. . . . The goals written in August of 2005 regarding her attention and purposeful vocalizations will be discontinued at this time.

8d. It is unclear from Terreri's February 10, 2006 report whether the goals to which she alluded (attention and purposeful vocalizations) pertained to Claimant's individual music therapy or play facilitation. The goals noted in the February 10, 2006 report were not set forth in Claimant's prior July 2004 IFSP. (See Factual Findings 9b and 9g, below.)

9a. On March 28, 2006, an IFSP meeting was attended by Service Agency Program Manager Nicolette Lawrence; Service Agency Counselor Elizabeth Ramirez; Claimant's mother; Family Advocate Caroline Wilson; and Speech and Language Pathologist Jennifer Cech. Some of the stated goals in the March 28, 2006

IFSP were: for Claimant to maintain and enhance the friendships that she has developed with the two to three peers that reside in the family's neighborhood and the eight to ten peers that she has met through the LAUNCH preschool program; and for Claimant to receive an appropriate level of educational services and supports to assist her in developing to her fullest potential.

9b. The goals stated in the March 28, 2006 IFSP differed only slightly from the goals set forth in the prior July 13, 2004 IFSP.⁴ Some of the stated goals in the July 13, 2004 IFSP were: for Claimant to be integrated into the community with neighborhood friends and friends from school; and for Claimant to receive the educational supports necessary to allow her to develop to her fullest potential.

9c. At the March 28, 2006 IFSP meeting, Cech provided extensive information regarding her play facilitation therapy with Claimant and regarding her observations of Claimant's music therapy. Cech recommended continuation of music therapy and play facilitation, and did not recommend reduction of play facilitation.

9d. The March 28, 2006 IFSP noted:

In the area of communication, [Claimant] is nonverbal. [Claimant] is able to express displeasure through the use of whining and sound production. [Claimant] has been utilizing a Little Step by Step augmentative device and can activate the switch on the device after being presented with a verbal command that requires a voice output response. HRC has been providing funding for music therapy services on [Claimant's] behalf in order to increase her purposeful vocalizations with others. According to [Claimant's] most recent progress report from Music Wonders, [Claimant] enjoys her music therapy sessions and is able to make eye contact with her therapist. On occasion [Claimant] has matched pitches and the shape of a melody that the therapist sings. [Claimant] continues to require maximum assistance to participate in the music sessions. At times, it seems that [Claimant] gets overstimulated and becomes vocally expressive but not in a purposeful way. At this time her therapist recommends a discontinuation of services due to lack of progress on her established goals. Music Wonders staff do indicate that [Claimant] may enjoy a session of music as a recreational activity.

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⁴ The March 28, 2006 IFSP was the first IFSP meeting to take place after July 2004.

9e. The March 28, 2006 IFSP also noted:

HRC has been providing funding for play facilitation on [Claimant's] behalf through Music Wonders. According to [Claimant's] most recent Music Wonders progress report, [Claimant] is able to make eye contact with the play facilitator and seems to watch her peers for brief periods of time during the playgroup. Music Wonders has recommended that play facilitation be discontinued at this time do [sic] to a lack of progress made towards the established goals. At this time [Claimant's parents] feel that Music Wonders is no longer the appropriate service provider to provide play facilitation to [Claimant]. Parents have requested that HRC provide them with vouchers for this service to allow them to purchase play facilitation services on [Claimant's] behalf as well as the necessary toys/equipment needed to provide this service. Play facilitation is not currently a service that falls under a voucher format. HRC has agreed to provide play facilitation services with the family's preferred service provider, Jennifer Cech, through a parent consultation model such that [Claimant's parents] are trained on how to facilitate social/recreational opportunities for [Claimant].

9f. The March 28, 2006 IFSP stated that the Service Agency would provide funding for: 10 Pampers Cruisers diapers per day through SuperCare Inc. from May 1, 2006 through February 28, 2007, at which time Claimant's annual IFSP meeting will be held and her need for monthly diaper services will be reassessed; music therapy through Music Wonders from May 1, 2006 through May 31, 2006; a total of 24 hours of play facilitation/social recreation from May 1, 2006 through October 31, 2006 in order to allow the family the flexibility to schedule sessions based on their availability as well as the availability of Jennifer Cech and [Claimant's] peers.

9g. There were no goals stated in either the July 2004 or March 2006 IFSPs specifically regarding Claimant's individual music therapy.

10. In a letter dated April 18, 2006, the Service Agency notified Claimant that it proposed the following:

Regarding the provision of diapers, HRC has arranged to have our durable medical provider, Supercare, deliver diapers to your home. We will continue to provide the Pampers Cruisers, indicated as medically necessary by [Claimant's] pediatrician, via Supercare to meet [Claimant's] diapering needs. . . . Diaper service through SuperCare has been included in the IFSP.

We have recently received and reviewed a progress report dated March 2006 for Music Wonders, the agency providing both Music Therapy (since November 2002) and play facilitation (since August 2005). The documentation indicates that they recommend discontinuing Music Therapy and Play Facilitation, due to [Claimant's] lack of progress on the established goals. Music Wonders does indicate that [Claimant] may enjoy a session of music as recreational activity. For this reason, HRC funding for Music Therapy will be discontinued after 5/31/2006.

During our meeting you indicated that you no longer believe that Music Wonders is the appropriate provider for play facilitation. You indicated that this was due to the style of service delivery, specifically that [Claimant's] typical peers had outgrown the 'circle time' format. You also indicated the Music Wonders did not have the staff to provide play facilitation. You requested that play facilitation be provided in the form of a voucher system so that you could pay Jennifer Cech and Ronin Sato for this service. However, as mentioned in previous letters, play facilitation is not currently a service that falls under a voucher format We have recently received the documentation necessary for vendorization of play facilitation through Jennifer Cech, your preferred service provider. As we discussed at the IFSP meeting, it is our belief that this service should be provided through a parent consultation model such that you are trained to facilitate social/recreational opportunities for [Claimant]. As Music Wonders recommended one session per week of recreation for [Claimant], we will agree to provide this social/recreational support through your preferred provider, Jennifer Cech. It will be authorized as a lump sum amount of 24 total hours of play facilitation/social recreation from 05/01/2006 – 10/31/2006. This will allow you the flexibility to schedule your training sessions, based on the availability of Jennifer Cech, yourselves and [Claimant's] peers. We believe that in this way, we can provide you the skills to continue to support [Claimant's] integration with her current circle of peers. The provision of play facilitation/social recreation with Jennifer Cech as service provider has been included in the IFSP.

Regarding the request to purchase toys to make your home more appealing to [Claimant's] peers . . . HRC will not purchase these services. The purchase of toys for your home . . . is a parent responsibility and will not be purchased by HRC.

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11a. On April 28, 2006, Terreri wrote another report to HRC, stating that Claimant “has been receiving individual music therapy sessions with this therapist one time per week for one hour since ____.” (Blank in original.) The April 28, 2006 report further stated:

[Claimant] will reach up to touch the therapist’s hand during the greeting activity. She does this with minimum to no assistance. When the guitar is presented to her she immediately reaches towards it and touches it, attempting to strum it. She usually needs assistance in manipulating her hand in a way that will produce a sound. Often she does not have the angle or strength in her hand necessary to strum independently. If the guitar is moved on a flatter angle and pulled away from her, [Claimant] is able to strum with her hand and produce a sound.

[Claimant] makes eye contact with the therapist and will visually track instruments to the left, right, up and down. She will choose instruments out of a field of two by reaching for an instrument.

[Claimant] will sometimes vocalize during the session. Her vocalizations are usually not purposeful. She is not successful with using her voice to indicate ‘more’ during instrument playing or listening. On one occasion, [Claimant] matched the shape of a melody (descending glide with voice) that the therapist sang when paired with a downward movement with her body, but this incident could not be reproduced in subsequent sessions. At times [Claimant] begins vocalizing loudly, which seems to be a response to over-stimulation.

[¶]

It is recommended that the goals written in August of 2005 regarding her attention span and purposeful vocalizations be discontinued at this time. Future goals should reflect those of occupational and physical therapy, focusing on positioning and sensory stimulation. Co-treatment sessions are recommended with these disciplines where possible. It is recommended that [Claimant] receive music therapy one time per week for one hour focusing on the [goals of increasing physical skills].

11b. There was no evidence presented at hearing that established that, in August of 2005, Claimant’s IFSP goals in individual music therapy pertained to “her attention span and purposeful vocalizations.”

12a. On May 16, 2006, Terreri sent another report to HRC regarding Claimant's music therapy playgroup session, noting that Claimant had been participating in the playgroup therapy "one time per week for one hour since October, 2005."

12b. The statement in Terreri's May 16, 2006 report regarding the commencement of the playgroup therapy is inaccurate, as it conflicts with Service Agency records indicating commencement in August of 2005. (See Factual Finding 10.)

12c. The statement in Terreri's May 16, 2006 report regarding the number of hours provided was inaccurate, because Claimant had not received one hour per week of playgroup therapy with Terreri or Music Wonders since October 2005. Rather, the hours provided were varied, and decreased to less than one hour per week as Terreri's treatment progressed, culminating in no hours provided after March of 2006.

12d. Terreri's May 16, 2006 report noted that the goals for the play group have been "increasing peer interaction and communication skills." The report further stated:

[Claimant] . . . would often smile during the groups, and seemed like she was watching the other children and what they were doing. Activities were facilitated by the music therapist in order to increase [Claimant's] peer interaction, including passing instruments during songs, movement games and dances that included hand-holding, and turn-taking opportunities. Books were often used during the playgroup, and [Claimant] was cued by a peer to activate her switch to participate in the 'reading' of the books.

[Claimant] was able to maintain attention for brief periods of time to observe the activities of her peers during the playgroups. She would occasionally laugh or smile in reaction to them. Exposure to peers and being involved in groups with peers is a necessary and integral part of human experience. It is felt that [Claimant] should continue to be involved in a playgroup of some kind to facilitate peer interaction.

It is recommended that [Claimant] participate in a playgroup setting one time per week for one hour with a focus on increasing her opportunities for peer interaction.

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13. In a May 17, 2006 letter to Claimants parents, HRC noted:

At the time of [Claimant's IFSP] meeting on March 28, 2006, [Claimant's] music therapist was recommending a discontinuation of services due to the fact that music no longer provided a therapeutic benefit to her. At the time of our meeting we were under the impression that [Claimant's] therapist was recommending that music be provided to [Claimant] in the form of a social recreational activity since listening to music appears to be something that she enjoys.

I believe that we have both taken the opportunity to dialogue with [Claimant's] therapist, Laurel Terreri, and review her newly generated report dated April 28, 2006. The report indicates that Laurel is now recommending a shift in program from focusing on speech and language goals to addressing occupational and physical therapy goals.

Originally music therapy was determined as appropriate intervention to address [Claimant's] needs in the area of speech and language particularly regarding increasing her ability to produce purposeful vocalizations. . . . It appears as though [Claimant] has reached her rehabilitation potential with this treatment modality.

Through careful consideration of the new information Ms. Terreri has provided us with, we have concluded that the proposed change in program focus on physical and occupations therapy goals would result in a duplication of services between music therapy and [Claimant's] occupational and physical therapy service being provided through the Torrance Unified School District. . . . At this time HRC will not support the continuation of music therapy services for [Claimant]. Per [Claimant's] IFSP document dated 3/28/06, funding for music therapy will be terminated as of May 31, 2006.

14. On June 9, 2006, a revised IFSP was prepared by HRC. The majority of the text remained the same as the March 28, 2006 IFSP. However, HRC added the following language:

According to an updated progress report written by Laurel Terreri of Music Wonders and dated 4/28/06, Ms. Terreri recommended a change in program from a focus on speech and language goals to a focus on occupational and physical therapy goals. After careful review of this recommendation by HRC personnel, it was

determined that this proposed change in program would result in a duplication of services between music therapy and [Claimant's] occupational and physical therapy services being provided through the Torrance Unified School District. HRC is not in support of the continuation of music therapy for [Claimant].

15. Claimant's mother submitted three Fair Hearing Requests on Claimant's behalf, which contested the Service Agency's proposed decisions to terminate music therapy, to reduce the hours of funding for play facilitation, and to deny vouchers for diapers, for play facilitation therapy and for play facilitation equipment.

Current Fair Hearing

16a. At the current fair hearing, Claimant's parents alluded to several prior Decisions concerning the services to be provided Claimant by HRC. Two of note are summarized below:

(1) A Decision dated September 30, 2002, OAH Case No. L2002050538, by Administrative Law Judge (ALJ) Roy Hewitt, granted the provision of music therapy, at one hour per week, as a form of speech therapy.

(2) A Decision dated March 16, 2003, OAH Case No. L2004010557, by ALJ Mark T. Roohk, denied the Service Agency's request to eliminate music therapy and ordered that music therapy continue at one hour per week. In that Decision, similar to the current case, HRC decided to discontinue funding because "music therapy was not addressing any specific need of Claimant that was not already being addressed by another therapy or service, and [because] Claimant had made 'no measurable progress' towards achieving her goals in the year she had been receiving the service." (OAH Case No. L2004010557, Factual Finding 3.)

16b. Based on the findings in the prior Decisions, Claimant was making progress toward achieving her music therapy goals as of 2003.

16c. There was no evidence presented at the current administrative hearing indicating that the efficacy of the music therapy had diminished or that Claimant is currently making less progress toward achieving her music therapy goals than in 2003.

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17. At the current administrative hearing, Cech testified credibly on Claimant's behalf. Cech is Claimant's speech therapist, provided by Torrance Unified School District. She has collaborated with Dong, incorporating music therapy into some of Claimant's speech therapy. She has also recently been providing play facilitation for Claimant. She pointed out the following, which are adopted as facts herein:

a. Claimant has verbal dyspraxia, which makes verbalization and matching sounds on command difficult. Claimant's music therapy has been used in conjunction with Cech's speech therapy to promote vocalization. Music therapy is a necessary component of Claimant's development and helps her to meet her speech goals in terms of vocalization and non-verbal communication such as nodding her head. Claimant is a "different child" from when Cech began working with her; Claimant's attention has improved due to the music therapy.

b. Claimant does vocalize with inflection. When Cech first stated working with Claimant, she did not vocalize, except to cry. However, she now vocalizes and uses a varied inflection when calling her mother. Cech worked with Terreri on a couple of occasions and saw Claimant vocalizing purposefully.

c. Claimant needs lots of repetition and consistent therapy. If this does not occur there is not as much improvement, and sometimes there is regression. For example, Cech noted that, since her speech therapy is funded through the school district, she does not work with Claimant during the summer months. When she resumes therapy in September, she has to "start all over again," and needs to take all of September and part of October to get back to the point where Claimant had been prior to August. Cech has noticed regression, even when Claimant misses only one week of treatment. Therefore, if a music therapist is not coming as frequently, Claimant may not be as vocal and may lack improvement or show regression. Additionally, Claimant takes longer to adjust to new things than others, so a change in therapists would affect her in that she would take a while to adjust to new therapy. For example, it took Cech three to six months to "get to know" Claimant and her needs.

d. Claimant needs socialization. During Claimant's play facilitation, Cech utilizes many materials and activities for Claimant's same ages peers (e.g. artwork, obstacle course), not just circle time. Now Claimant's typical peers have been asking Claimant's mother when the next play group will be. In the session prior to the administrative hearing, Claimant was attentive.

e. Thirty hours a month of play facilitation is appropriate. That was the original recommendation of Clemens and it has never been fully implemented. The therapy needs to be implemented in order to determine if it should be kept, or if hours should be increased or decreased. Although Cech could provide the play facilitation

in five hours per week, the additional hours, up to 30 per month, would be helpful for Claimant.

f. Cech's contract is currently for three months, and she has already gotten the program started. However, she feels that three months is inadequate. There is still a parent-training portion of the program which would allow them to provide the play facilitation in the therapists' absence. It is difficult for Cech, a trained professional, to engage all the kids and utilize all of Claimant's devices, without her assistant. Therefore, it will be difficult for Claimant's parents to do without professional help. Nevertheless, Claimant does have care providers that can be trained. Cech expects at some point to have the parents trained and ready to carry on the play facilitation.

18. Claimant's mother provided the following credible testimony, adopted as facts herein:

a. Cech has been teaching Claimant for several years and has provided 500 plus treatment hours.

b. Claimant's home hospital program prevents her from having any interaction with typical children at school. Social integration and friendship development are important, through play facilitation and other means.

c. Although HRC funding for play facilitation was authorized several years ago, Music Wonders has only provided 30 hours of play facilitation.

d. Claimant cannot use toys from typical retail stores and is required to order adaptive equipment from special catalogs. This therapeutic equipment is cost prohibitive for Claimant's parents.

19a. Dong supplied a July 11, 2006 letter on Claimant's behalf, which was admitted as evidence at the hearing. In his July 1, 2006 letter, he noted:

[Claimant] is a sweet, lovable girl who responds with great motivation to music and music-based interventions. To this end, it is a highly useful tool for her development, but it needs to be employed with the precision and expertise of a Board-Certified Music Therapist with whom she is able to develop a successful therapeutic relationship . . .

I had the opportunity to work with [Claimant] as her Music Therapist for 2 years and 9 months, during which we developed a successful therapeutic relationship, and [as] a result she consistently demonstrated progress towards each of her goal areas. Through her Music Therapy sessions, [Claimant] was able to

increase her verbal and non-verbal functional communication skills, expand her capacity for purposeful social interaction, and improve her motor coordination through the purposeful use of instruments and movement.

I have come to the understanding that funding for [Claimant's] Music Therapy services were recently stopped. I feel that this is a serious mistake. It is my professional opinion that [Claimant] benefits greatly from Music Therapy, and has a unique response to music-based interventions that is important and crucial to make use of a tool for her development. . . .

19b. Along with his letter, Dong supplied a DVD documenting an August 2005 individual music therapy session. During that session, Claimant appeared to exhibit purposeful vocalization in greeting Dong. Additionally, she demonstrated non-verbal communication in nodding when asked if she wanted to touch a guitar Dong was playing. She also appeared to visually track Dong when he moved about the room, and she was attentive while the therapy session transpired. The DVD corroborated Dong's assertions, and indicated that, as of August 2005, Claimant was making progress toward goals of purposeful vocalization and non-verbal functional communication skills.

20a. Claimant's IFSPs were silent regarding the goals of her individual music therapy; therefore, the evidence did not establish that Claimant failed to meet her IFSP goals.

20b. The only goals specifically pertaining to Claimant's individual music therapy are noted in Dong's May 2005 report (increase non-verbal communication skills, increase verbal communication skills, and improve gross and fine motor coordination), and he reported that those goals were met. While Terreri's February 10, 2006 report alluded to music therapy goals of "attention and purposeful vocalization," her report did not specify that those goals pertained to Claimant's individual music therapy. Furthermore, according to Dong's May 2005 report, the goals of increasing purposeful vocalization with others and increasing focused attention span in a group environment were the goals of Claimant's play facilitation, not her individual music therapy.

20c. Based on the totality of the evidence presented at the administrative hearing, as of December 2005 (at which point Dong discontinued providing music therapy), Claimant was making some progress in her individual music therapy. Cech and Dong, both of whom provided extensive, collaborative hours of treatment to Claimant and were familiar with her individual needs and behaviors, opined similarly that Claimant exhibited purposeful vocalization and non-verbal communication at their sessions.

20d. Terreri's opinions regarding the efficacy of the individual music therapy sessions were given less weight for the following reasons:

(1) Terreri made several misstatements in her reports and she apparently confused the goals of the individual therapy with those of the play facilitation.

(2) Terreri's opinions were based on a less extensive understanding of Claimant than Dong's or Cech's, since she provided only minimal therapy on her own (15 hours of individual music therapy over five months).

(3) Terreri's less than consistent provision of services may have affected Claimant's demonstration of improvement and may have contributed to a showing of regression.

21a. The goals in Claimant's July 13, 2004 IFSP included that Claimant be integrated into the community with neighborhood friends and friends from school. The totality of the evidence presented at the administrative hearing established that play facilitation has been effective in meeting that goal.

21b. Additionally, according to Dong's May 2005 report, the goals of Claimant's play facilitation were increasing vocalization with others and increasing focused attention span in a group environment. According to Terreri's May 16, 2006 report the goals for the play facilitation were "increasing peer interaction and communication skills." As confirmed by Terreri, Dong and Cech, Claimant has demonstrated progress toward meeting those goals. (See Factual Findings 12d, 17 and 20, above.)

21c. The evidence did not establish that the number of hours of play facilitation should be reduced. Although Terreri recommended only one hour per week of play facilitation, she provided no explanation for her recommended reduction. Per Cech's more credible testimony, thirty hours per month for Claimant's play facilitation is a more appropriate recommendation.

LEGAL CONCLUSIONS

Issue 1: Music Therapy

1. Claimant's appeal of the Service Agency's termination of funding for music therapy is sustained. (Factual Findings 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20; Legal Conclusions 2, 3 and 4.)

2a. In attempting to discontinue a service, HRC bears the burden of proving by a preponderance of the evidence that the service was not effective in meeting the goals stated in a consumer's individual program plan (IPP).

2b. Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . . (Emphasis added.)

2c. Welfare and Institutions Code section 4646 provides, in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Emphasis added.)

2d. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her

life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals .

[¶] . . . [¶]

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services. (Emphasis added.)

2e. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[¶] . . . [¶]

(7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have

been provided, and reasonable progress toward objectives have been made.” (Emphasis added.)

2f. Pursuant to the Lanterman Act, an IPP must include a statement of the consumer’s goals and objectives, based on the consumer’s needs and preferences. Services provided a consumer must be effective in meeting the consumer’s IPP goals, and there must be reasonable progress toward objectives.

2g. The reports of Claimant’s various therapists contain several statements regarding treatment goals. However, these various stated goals cannot replace those required by the Lanterman Act to be stated in Claimant’s IPP/IFSP. While such suggested goals may be considered in determining the goals and objectives to be included in an IPP, such reports cannot, by themselves, take the place of the collaborative process envisioned by the Legislature in mandating the IPP process.

3. HRC did not prove by a preponderance of the evidence that Claimant’s music therapy was not effective in meeting the goals stated in Claimant’s IPP/IFSP.

4. Even assuming that the goals stated in Dong’s report could substitute for goals required to be set forth in Claimant’s IPP/IFSP, the evidence established that Claimant was making reasonable, albeit very gradual, progress in her individual music therapy. Therefore, HRC did not prove by a preponderance of the evidence that Claimant failed to make reasonable progress toward her music therapy goals.

Issue 2: Reduction of Play Facilitation Hours

5. Claimant’s appeal of the Service Agency’s reduction of the number of hours funded for play facilitation is sustained. (Factual Findings 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21; Legal Conclusions 6, 7 and 8.)

6a. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See Evidence Code sections 115 and 500.)

6b. Thus, in attempting to reduce the number of service hours funded for play facilitation, HRC bears the burden of proving by a preponderance of the evidence that that the reduction of hours is necessary.

7. HRC did not prove by a preponderance of the evidence that a reduction in the number of play facilitation hours was warranted.

8. Additionally, the evidence established that the originally-recommended thirty hours per month of play facilitation has never been fully implemented, and Claimant should receive those services as authorized. The therapy needs to be

implemented in order to determine if it should be kept, or if hours should be increased or decreased.

Issue 3: Vouchers for Diapers

9. Claimant's appeal of the Service Agency's denial of vouchers for diapers is denied. (Factual Findings 1, 2, 3 and 10; Legal Conclusions 6a, 10 and 11.)

10. Claimant bears the burden of proving by a preponderance of the evidence that a change in diaper services, from direct delivery to a voucher system, is necessary.

11. Although there were disruptions in diaper delivery service approximately eight months ago, there was no evidence to establish that such problems have occurred since January 2006. Consequently, Claimant did not prove by a preponderance of the evidence that a change in the method of providing diapers was warranted.

Issue 4: Vouchers for Play Facilitation

12. Claimant's appeal of the Service Agency's denial of vouchers for play facilitation therapy is denied. (Factual Findings 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21; Legal Conclusions 6a, 13 and 14.)

13. Claimant bears the burden of proving by a preponderance of the evidence that changing the funding of play facilitation to a voucher system is necessary. (See Legal Conclusion 6a.)

14. HRC has arranged for Claimant's preferred provider, Cech, to provide play facilitation services. There was no evidence to establish that a voucher system for play facilitation services was warranted. Consequently, Claimant did not prove by a preponderance of the evidence that a change in the method of funding play facilitation was warranted.

Issue 5: Vouchers for Play Facilitation Equipment

15. Claimant's appeal of the Service Agency's denial of vouchers for play facilitation equipment is denied. (Factual Findings 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21; Legal Conclusions 6a, 16 and 17.)

16. Claimant bears the burden of proving by a preponderance of the evidence that HRC must fund play facilitation equipment through a voucher system. (See Legal Conclusion 6a.)

17. There was no evidence to establish that HRC is required to provide Claimant vouchers for play facilitation equipment. Consequently, Claimant did not prove by a preponderance of the evidence that HRC must fund play facilitation equipment through vouchers.

ORDERS

Harbor Regional Center shall continue to fund music therapy for Claimant at one hour per week.

Harbor Regional Center shall continue to fund play facilitation for Claimant at 30 hours per month, for six months, at which time the need for this amount of services shall be reassessed.

Harbor Regional Center shall continue to provide for the delivery of Pampers Cruisers to meet Claimant's diapering needs.

DATED: July 28, 2006

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.